

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MICHAEL CARTER, et al.,)	
)	
Plaintiffs,)	Case No. 4:23-cv-01548-CDP
)	
v.)	
)	
THE CITY OF ST. LOUIS,)	
)	
)	
Defendant.)	

DEFENDANT’S MOTION TO DISMISS
PLAINTIFFS’ AMENDED COMPLAINT PURSUANT TO RULE 12(b)(6)

COMES NOW Defendant City of St. Louis (“Defendant”) and moves this court to dismiss Plaintiffs Michael Carter, et al. (“Plaintiffs”) Petition under Rule 12(b)(6) of the Federal Rules of Civil Procedure because all eight Counts fail to state a claim upon which relief can be granted. In support, Defendant states:

1. All Counts (Counts I through VII) must be dismissed because they fail to “contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The allegations in all the counts are not sufficiently factually detailed to “allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Whitney v. Guys, Inc.*, 700 F.3d 1118, 1128 (8th Cir. 2012)). Instead, the Petition consists of “threadbare recitals” of the elements of various causes of action, which are insufficient to survive dismissal. *Iqbal*, 556 U.S. at 678, 129 S.Ct. 1937; *Twombly*, 550 U.S. at 555, 127 S.Ct. 1955.

2. Counts I and III, which assert unpaid overtime claims under the Fair Labor Standards Act (“FLSA”) and the Missouri Minimum Wage Law (“MMWL”), must be dismissed

as matter of law.

3. Count II, which asserts a claim for retaliation under FLSA, must be dismissed because Plaintiffs fail to allege an adverse employment action.

4. Count III and Count IV, which asserts a claim for failure to warn of reduction of wages under state law, must be dismissed because 1) Defendant is not an employer covered by the statute, and 2) as a matter of law, Plaintiffs' wages have been increased, not decreased, prior to the filing of their Petition. RSMo. § 290.100; City of St. Louis Ordinances 71686 and 71512.

5. Count IV asserts a claim against state minimum wage law without stating how Defendant has not paid legitimately earned overtime wages.

6. Count V must be dismissed because the City Charter does not provide a private right of action for damages against the City, its Divisions, or its supervisors/employees. *Holmes v. Kansas City Board of Police Commissioners*, 364 S.W.3d 615 (Mo. App. W.D. 2012); *Egan v. St. Anthony's Medical Center*, 244 S.W.3d 169 (Mo. 2008).

7. Count VI must be dismissed because it fails to state a claim that a policy or custom of the City was the moving force behind constitutional deprivations. *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 695 (1978).

8. Count VII purports to assert claims and remedies arising out of contract law. All are barred by RSMo. § 432.070 because no municipal entity can be held liable for an unwritten contract. *Webcon Grp., Inc. v. S.M. Properties, L.P.*, 1 S.W.3d 538 (Mo. App. E.D. 1999). Plaintiffs attempt to rely on the Collective Bargaining Agreement, but fail to allege they are parties to that agreement. Accordingly, Defendant cannot be sued for the theories asserted in this Count.

9. Defendant is entitled to an award of its costs and attorney fees in defense of this action. *Fox v. Vice*, 563 U.S. 826, 833 (2011); FRCP 54.

WHEREFORE, Defendant City of St. Louis requests that the Court dismiss Plaintiffs' First

Amended Petition in its entirety with prejudice, award Defendant its costs and attorney fees associated with this Motion, and for any other orders which this Court deems proper.

Respectfully submitted,

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